

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 25, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2076-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**JOHN CIANCIOLO,
LIBORIO CIANCIOLO
and SERAFINA MARTELL,**

Plaintiffs-Appellants,

v.

ANTONINA CIANCIOLO,

Defendant-Respondent.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN E. McCORMICK, Judge. *Reversed and cause remanded with directions.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. John Cianciolo, Liborio Cianciolo and Serafina Martell, the adult children of Serafina Cianciolo, sued their sister, Antonina Cianciolo, alleging fraud and breach of contract, and seeking recovery of property comprising an estate allegedly created by a revocable trust executed

by their mother. The plaintiffs appeal from the trial court order granting Antonina's motion for reconsideration and dismissing their complaint for lack of personal jurisdiction. Because we conclude that the trial court had personal jurisdiction, we reverse the order and remand for further proceedings.

I. BACKGROUND

Shortly after this lawsuit commenced, Antonina moved the court to dismiss the complaint for lack of personal jurisdiction. In support of her motion, Antonina filed an affidavit indicating that she had resided in Florida since 1985 and that her mother had resided with her between seven and eight months each year until her death in April 1991. In the affidavit, Antonina acknowledged that she was the sole beneficiary of her mother's trust, the documents for which were prepared in Wisconsin and executed by her mother in Florida.

Liborio, a Wisconsin resident, filed a counter affidavit, asserting that Antonina contacted him by telephone during the early months of 1991. At that time, the parties' mother, fatally stricken with cancer, resided with Antonina in Florida. Liborio asserted that Antonina advised him that their mother was near death and suggested that a trust be established so that her estate could avoid probate. Liborio averred that Antonina suggested the name of a mutual friend, Attorney Joseph Frinzi, to prepare the trust document, specifying that it provide that Antonina be left their mother's assets upon her death. Liborio stated that Antonina then assured him that she would ultimately divide the proposed estate's assets equally among the siblings. Liborio told the court that Antonina indicated that she had already contacted Attorney Frinzi to prepare the trust and asked Liborio to pick the document up as soon as it was prepared and mail it to her in Florida.

Attorney Frinzi submitted an affidavit indicating that Liborio contacted him and requested that he draft a trust document creating a revocable trust naming Antonina both as successor trustee and sole beneficiary. The trust document identified Serafina Cianciolo as a Wisconsin domiciliary, incorporated Wisconsin law for purposes of the trust's construction and administration, and listed property in Wisconsin, including an account at the Mayfair Firststar Bank and an apartment building located in the city of

Milwaukee. Liborio sent the trust document to Florida as Antonina had requested, and Serafina Cianciolo executed it on March 18, 1991.

Serafina Cianciolo returned to Milwaukee where she died on April 7, 1991. Antonina returned to Wisconsin shortly thereafter, took possession of the property assigned to the trust and proceeded to liquidate the trust's property over the following year. Antonina did not disburse any of the trust's assets to her siblings, despite their demand that she do so.

Antonina's siblings commenced the instant lawsuit in 1995. Antonina moved the trial court to dismiss the case for lack of personal jurisdiction. Initially, the trial court denied the motion. However, upon reconsidering whether the trial court had long-arm jurisdiction over Antonina, the trial court determined that it lacked personal jurisdiction over her and dismissed the case.

The appellants raise two issues: (1) whether the trial court erred in determining that it lacked long-arm jurisdiction over Antonina; and (2) whether the trial court erred in dismissing the case upon Antonina's motion for reconsideration without holding an evidentiary hearing. Because our disposition of the first issue resolves the appeal, we decline to address the second issue. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (if decision on one point disposes of appeal, appellate court need not decide other issues raised).

II. DISCUSSION

"Personal jurisdiction is a question of law that we review *de novo*." *Brown v. LaChance*, 165 Wis.2d 52, 65, 477 N.W.2d 296, 302 (Ct. App. 1991). A defendant is subject to personal jurisdiction if the defendant's contacts with Wisconsin were sufficient to meet the elements identified in our long-arm statute and if application of the statute does not violate due process. *See id.* at 66, 477 N.W.2d at 303.

Section 801.05(6)(c), STATS., provides that a Wisconsin court may acquire jurisdiction over a non-resident defendant in an action claiming "that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this state at the time the defendant acquired possession or control over it."¹ The facts adduced before the trial court met the requirements of this section. It was undisputed that substantial property, both real and liquid, was located within Wisconsin at the time that Serafina Cianciolo executed the trust and later when Antonina liquidated the trust. Accordingly, the trial court had personal jurisdiction over Antonina under § 801.05(6)(c). Because we conclude that this section applies, we need not consider whether any other section is applicable. See *Brown*, 165 Wis.2d at 67, 477 N.W.2d at 303.

We next address the issue of whether subjecting Antonina to the personal jurisdiction of our courts under § 801.05(6)(c), STATS., violates due process. Due process requires that, for personal jurisdiction to attach, a defendant "must have certain minimum contacts with the state so that maintenance of the action does not offend traditional notions of fair play and substantial justice." *Id.* (citation omitted). "Compliance with the long-arm statute is presumed to be compliance with due process requirements." *Id.* This presumption, however, is rebuttable under an analysis of the jurisdictional contact between the defendant and the state. The analysis is comprised of five items: (1) the quantity of the contacts between the defendant and Wisconsin; (2) the nature and quality of the contacts of the defendant with Wisconsin; (3) the source of the cause of action; (4) the interest of Wisconsin in the action; and (5) the convenience in having the action tried in Wisconsin. *Id.* at 68, 477 N.W.2d at 303.

Antonina argues that she had no relevant contact with Wisconsin since moving to Florida in 1985, and that those contacts she did have were unrelated to the subject matter of the lawsuit. We disagree. Even if Antonina's contacts were relatively few, each was significant.² A trust document

¹ We note that the plaintiffs alerted the trial court to their reliance on § 801.05(6)(c), STATS., by general reference in their complaint and by specific reference in their brief in opposition to Antonina's motion to dismiss.

² The trial court concluded that Antonina lacked sufficient contact with Wisconsin because Attorney Frinzi's affidavit established that she did not personally consult with him to set up the trust: "Without this consultation by [Antonina] with Attorney Frinzi, no jurisdiction over Antonina exists." Unlike the trial court, we conclude that Antonina's decision to contact Attorney Frinzi

incorporating the laws of Wisconsin for the purposes of construction and administration was prepared in Milwaukee at her request. Virtually all of the property subject to the trust was located in Wisconsin. Following Serafina Cianciolo's death, Antonina spent approximately six months in Wisconsin administering the trust and liquidating its assets before returning to Florida. These transactions were imbued with substantial legal significance as each was necessarily accomplished with the aid of the laws of Wisconsin.

We further conclude that these contacts establish Wisconsin as the source of the siblings' claim and the state's interest in the action. The source of the cause of action is the siblings' contention that Antonina defrauded them of their rightful inheritance. The instrument of the alleged fraud was the trust document, an instrument drafted in Wisconsin at Antonina's behest. When, pursuant to the trust, Antonina personally liquidated her mother's property, including real property located in Wisconsin, she spent a considerable amount of time in Wisconsin and engaged in activity dependent upon Wisconsin's laws. Further, we conclude that Wisconsin is a convenient forum since the siblings' claim turns on transactions involving real estate located in Wisconsin. *See id.* at 69, 477 N.W.2d at 304.

Therefore, we conclude that Antonina had sufficient contacts with Wisconsin to subject her to the court's long-arm jurisdiction pursuant to § 801.05(6)(c), STATS. We further conclude that application of this statute to Antonina does not violate the principles of due process of law. Accordingly, because the trial court erred in dismissing the plaintiffs' case, we reverse the order and remand the matter for reinstatement of the complaint.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

(..continued)

through Liborio is nondeterminative in light of other significant contacts she had with Wisconsin.